

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. 11-N-10198
	)	
NICHOLAS GEORGE DEMMA,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
Member No. 47318,	)	ENROLLMENT
	)	
A Member of the State Bar.	)	
_____	)	

Respondent Nicholas George Demma was charged with failing to comply with California Rule of Court, rule 9.20(c). He failed to participate either in person or through counsel and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

## **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on July 15, 1970, and has been a member of the State Bar since then.

### **Procedural Requirements Have Been Satisfied**

On February 15, 2011, the State Bar filed and properly served the NDC on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail receipt was signed by respondent.

The State Bar also telephoned respondent at the number listed in respondent's membership records. The call was not answered. In addition, the State Bar located potential alternative addresses for respondent after conducting an extensive search. The State Bar sent copies of the NDC to respondent at the alternative addresses. The copies were not returned as undeliverable by the Post Office. Respondent did not respond to these attempted communications.<sup>3</sup>

Respondent failed to file a response to the NDC. On March 28, 2011, the State Bar filed a motion for entry of his default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. Respondent did not file a response to the motion and his default was entered on April 14, 2011. He was also placed on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and has remained inactive since that time.

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<sup>3</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).) Respondent does not have an email address listed in his membership records.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days after order entering default is served to file motion to set aside default].) On December 15, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent does not have any other disciplinary matters pending against him; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of respondent's misconduct. Respondent has not responded to the petition or moved to set aside or vacate the default. This case was submitted for decision by order filed January 10, 2012.

Respondent has been disciplined on three prior occasions. On June 17, 2004, he was privately reproved and ordered to comply with specified conditions. The misconduct underlying this discipline involved respondent's failure to list his community property interest in several parcels of real property in his personal bankruptcy case.

On November 15, 2006, respondent was suspended from the practice of law for two-years, execution of which was stayed, and placed on probation for two-years subject to certain probation conditions. The misconduct involved respondent's failure to comply with several conditions that were attached to the 2004 private reproof.

Respondent's failure to comply with the conditions of probation imposed by the Supreme Court in the November 2006 discipline case gave rise to respondent's third prior discipline. On October 5, 2010, he was suspended for a minimum of two years, and he was ordered to comply with California Rules of Court, rule 9.20. Respondent did not file a response to NDC in this prior case and his default was entered. Respondent's failure to comply with rule 9.20 as ordered gave rise to the present discipline case.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) In this case, the admitted acts show that respondent is culpable as charged of violating California Rule of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance with the rule as ordered by the Supreme Court in the October 2010 discipline case.

### **RECOMMENDATION**

#### **Disbarment**

Having found that all of the requirements of rule 5.85(E) are satisfied, the court recommends that respondent Nicholas George Demma be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

#### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Nicholas George Demma, State Bar Number 47318, be involuntarily enrolled as an

inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: January \_\_\_\_\_, 2012

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RICHARD A. HONN  
Judge of the State Bar Court